

REMARKS

This response is responsive to the Office Action dated June 24, 2010. Claims 1 and 3-11 are pending. The final Office Action rejects Claims 1, 3, 4, 6, 8, 9, and 11 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,300,869 to Swearingen ("Swearingen"). Claim 5 is rejected under 35 U.S.C. § 103(a) as being obvious over Swearingen in light of ordinary skill in the art. Claims 7 and 10 are objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten in independent form.

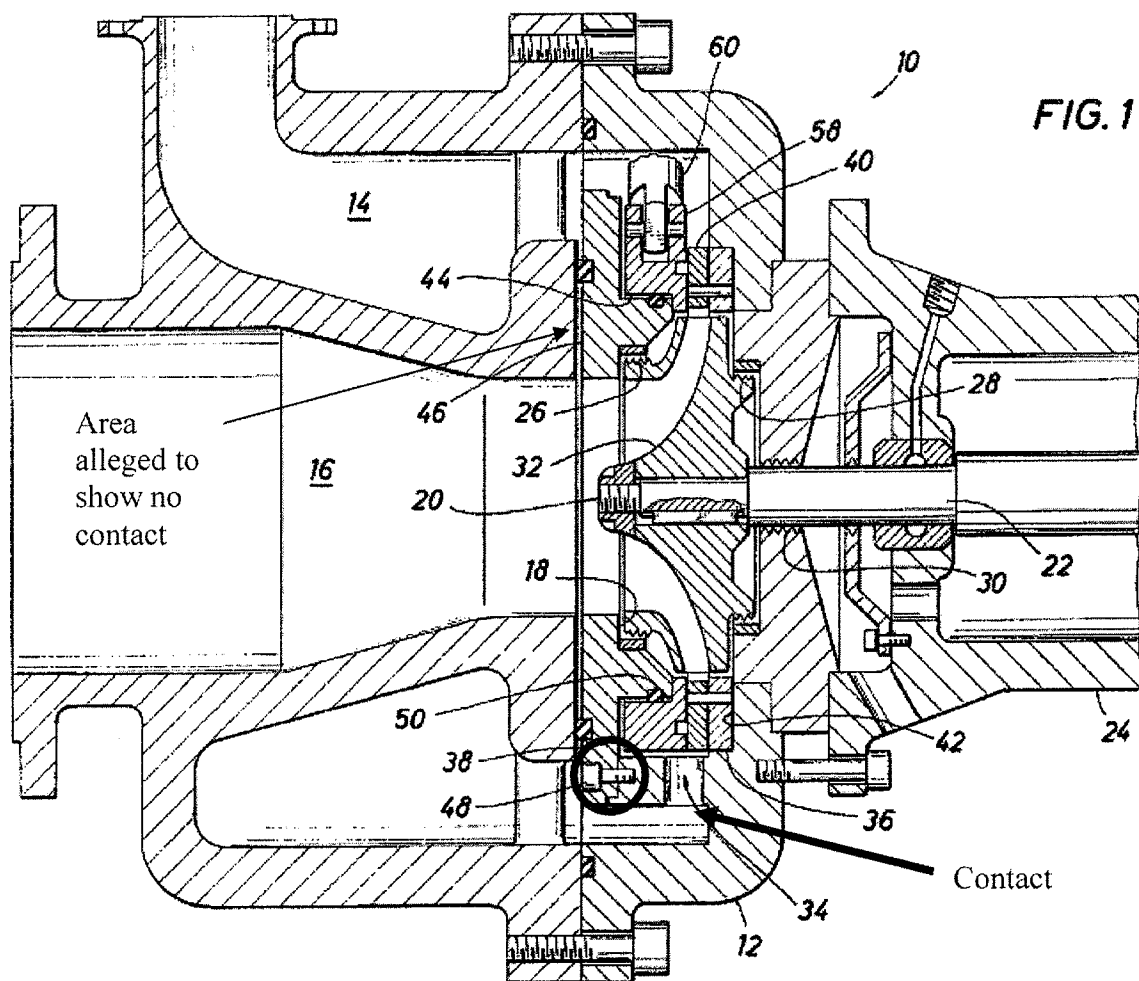
Claim 1 is the only independent claim pending in the application. Claim 1 includes the following limitations (emphasis added):

1. A turbocharger comprising a center housing, a variable nozzle device, and an exhaust housing being mechanically and/or thermally decoupled from the variable nozzle device, wherein the variable nozzle device comprises a circumferential arrangement of vanes interposed between a nozzle ring and an outer ring integrally formed with a peripheral ring fitted on said nozzle ring and coupled to said center housing,

wherein the peripheral ring is radially and axially spaced from the exhaust housing, so that any contact between the exhaust housing and the peripheral ring is avoided at all locations.

With regard to the cited reference, Swearingen discloses a variable nozzle turbine 10 (see, e.g., FIG. 1.) The turbine 10 comprises an exhaust housing 12 in which a turbine wheel 20 is mounted on a shaft 22. An inlet 14 and a nozzle assembly 34 supply exhaust gas to the turbine wheel 20. The nozzle assembly 34 includes a stationary clamping ring 36 (the "nozzle ring" in the Office Action) and an actuator ring 38 that sandwich a plurality of nozzle blades 40 (the "vanes" in the Office Action) therebetween. The actuator ring 38 includes an annular recess 44 that receives a bearing ring 46 (the "outer ring" in the Office Action). The bearing ring 46 is stated in the Office Action to also meet the limitations of the claimed peripheral ring "near" rotary seal 26. See Office Action pg. 2.

The Office Action references the gap between the portion of housing 12 “left of 46” and the bearing ring 46 as meeting the claim limitation underlined in Claim 1 reproduced above, namely, that there is no contact between the peripheral ring and exhaust housing at any location. *See id.* However, Swearingen states that the “bearing ring 46 [is] rigidly mounted within the exhaust housing 12 by a plurality of bolts 48.” *See Swearingen col. 5:51-54.* In this regard, the area circled below illustrates that the bearing ring 46 of Swearingen directly mounts to the exhaust housing 12.



Swearingen FIG. 1

Accordingly, Swearingen fails to teach or suggest a “peripheral ring [that] is radially and axially spaced from the exhaust housing, so that any contact between the exhaust housing and the peripheral ring is avoided at all locations.” Instead, Swearingen teaches contact between the bearing ring 46 and the exhaust housing 12 of the turbine 10 at least at the location noted above. Thus, Swearingen fails to meet the limitations of independent Claim 1.

The fact that Swearingen’s ring 46 avoids contact with one portion of the exhaust housing 12 (i.e., the portion left of 46 in Figure 1) does not meet the noted limitation of Claim 1. Claim 1 requires that contact is avoided with the exhaust housing at all locations.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully submit that each of Claims 1 and 3-11 of the present application are now in condition for allowance. It is respectfully requested that a Notice of Allowance for all pending claims be issued in due course. The Examiner is encouraged to contact Applicants’ undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

The patentability of the sole independent claim has been argued as set forth above and thus Applicants will not take this opportunity to argue the merits of the rejection with regard to the dependent claims. However, Applicants do not concede that the dependent claims are not independently patentable and reserve the right to argue the patentability of the dependent claims at a later date if necessary.

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Filed: December 25, 2006
Response dated November 11, 2010

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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